IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 832 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE A.M.KAPADIA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MAGANBHAI KALIDAS PATEL - Applicant(s)

Versus

STATE OF GUJARAT - Respondent(s)

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Appearance :

MR HARSHADRAY A DAVE for Applicant(s) : 1,MR HARDIK A DAVE for Applicant(s) : 1,
MR HM PRACHCHHAK APP for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE A.M.KAPADIA

Date : 14/10/2005

ORAL JUDGMENT

1. Rule. Mr. HM Prachchhak, learned APP appears and waives service of notice of rule on behalf of the respondent – State of Gujarat.

2. By filing instant Criminal Revision Application under Section 397 read with Section 401 of the Code of Criminal Procedure ('the Code' for short), the applicant seeks to challenge the order dated 27.9.2005, recorded below application Ex.1 in Criminal Case No.6506 of 2004 by the learned JMFC, Anand by which the application filed by the applicant to get back the passport bearing No.A6486153 for a limited period from 10.10.2005 to 10.1.2006 which was ordered to be deposited while granting bail in his favour has been rejected.

3. The applicant is residing at Anand and is a businessman indulged in running a tobacco company and a cold storage. One offence came to be registered against him vide CR No.I-430 of 2003 at Anand Town Police Station for the offence under Sections 406, 420, 467, 468, etc. The applicant, therefore, filed application before the learned JMFC, Anand seeking his release on regular bail. The said application came to be granted by the learned JMFC vide order dated 15.5.2004 on the terms and conditions mentioned therein. One of the conditions of the said order was to deposit the passport of the applicant and accordingly the applicant has deposited the passport with the learned JMFC, Anand.

4. The applicant is required to go abroad from 10.10.2005 to 10.1.2006 for the purpose of renewal of his permit for permanent residence. The applicant therefore approached the learned JMFC, Anand with an application for modification of the order and for granting the passport for the requested period. The learned JMFC, Anand rejected he application vide order dated 27.9.2005, Annexure A to the petition, which has given rise to the present petition.

5. Mr. Harshadray Dave, learned advocate for the applicant, has contended that if the application filed by the applicant is not granted and the passport which he has deposited pursuant to the order releasing him on bail is not handed over to him for the limited period, the applicant will not be in a position to go to USA for renewing his permit for permanent residence. He states that the applicant is ready and willing to abide by all the conditions that may be imposed by this Court. He therefore urged that the order which is impugned deserves to be quashed and set aside by allowing this application filed by the applicant and thereby to handover the passport to the applicant for the limited period upto 10.1.2006. He therefore urged that this petition may be allowed by accepting the prayer prayed for by the

applicant.

6. Mr. HM Prachchhak, learned APP has contended that the prayer made by the applicant may not be granted in the facts and circumstances of the case because from the record of the case it is clear that the applicant is facing trial of the offence under sections 406, 420, 467, 468, etc. He therefore urged to dismiss the petition.

7. This Court has considered the submissions advanced by Mr. Harshadray Dave, learned advocate for the applicant and Mr. HM Prachchhak, learned APP for the respondent State of Gujarat and perused the impugned order as well as the averments made in the application and the annexures annexed thereto.

8. So far as filing of the FIR against the petitioner under Sections 406, 420, 467, 468, etc., is concerned, there is no dispute. The applicant has also been enlarged on regular bail by the learned JMFC, Anand vide order dated 15.5.2004. However, while releasing the applicant on bail, certain conditions were imposed on the applicant. Vide one of the conditions, being condition No.5, the applicant was directed to surrender his passport in the court of learned JMFC, Anand and in

compliance of the said order the applicant has already deposited the passport in the court of learned JMFC, Anand. On perusal of the xerox copy of the permanent residence card which is at page 27 it is seen that the applicant is holding permanent residence card of USA. On perusal of the xerox copy of the permission granted by USA Bureau of Citizenship and Immigration Services it is seen that the date for re-entry to USA by the applicant shall expire on 19.11.2005 meaning thereby if before that date the applicant will not go to USA then he will permanently lose the permanent residence card of USA. Therefore for renewal of the said permission, the applicant has to reach USA before 19.11.2005.

9. It is not the case of the prosecution that the applicant has committed any breach of the conditions while on bail and he has misused the liberty granted to him. The cause advanced by the applicant for getting back the passport for limited period from 10.10.2005 till 10.1.2006 appears to be genuine as the applicant wants to go to USA for renewal of his period to retain his permanent residence card. Therefore, according to this court, the passport being No.A6486153 is required to be handed over to the applicant for the limited period from 10.10.2005 to 10.1.2006 by directing the learned JMFC,

Anand before whom the passport has been deposited by the applicant to handed it over to the applicant forthwith on the condition that the applicant shall surrender the said passport on or before 15.1.2006 before the learned JMFC, Anand.

10. For the foregoing reasons, the application succeeds and accordingly it is allowed, the result of which is that the impugned order dated 27.9.2005 passed by the learned JMFC, Anand in Criminal case No.6506 of 2004 rejecting the application for handing over passport to the applicant is hereby quashed and set aside and as a consequence thereof the learned JMFC, Anand is directed to handover the said passport to the applicant forthwith on the condition that the applicant shall furnish personal bond of Rs.2 lakhs and surety of the like amount to the satisfaction of the trial court and with a condition that the applicant shall surrender the said passport on or before 15.1.2006 before the learned JMFC, Anand and also on a further condition that the applicant shall remain present before the learned JMFC, Anand during the interregnum period if his presence is required during the course of the trial. The applicant shall file an undertaking before this Court within a period of one week hereof to the effect that he shall comply with all

the conditions imposed upon him by this Court by this order.

Rule is made absolute to the aforesaid extent.

DS today itself is permitted.

(A.M. Kapadia, J.)

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